

Antideficiency Act Background

The Antideficiency Act is one of the major laws through which Congress exercises its constitutional control of the public purse. It evolved over a period of time in response to various abuses.

In its current form, the law prohibits:

Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. 31 U.S.C. § 1341(a)(1)(A).

Involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law. 31 U.S.C. § 1341(a)(1)(B).

Accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property. 31 U.S.C. § 1342.

Making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by agency regulations. 31 U.S.C. § 1517(a).

The fiscal principles underlying the Antideficiency Act are really quite simple. Government officials may not make payments or commit the United States to make payments at some future time for goods or services unless there is enough money in the "bank" to cover the cost in full. The "bank," of course, is the available appropriation.

Violations of the Antideficiency Act are subject to sanctions of two types, administrative and penal. The Antideficiency Act is the only one of the title 31, United States Code, fiscal statutes to prescribe penalties of both types.

Reporting Requirements

Once it is determined that there has been a violation of 31 U.S.C. §§ 1341(a), 1342, or 1517(a), the agency head "shall report immediately to the President and Congress all relevant facts and a statement of actions taken." 31 U.S.C. §§ 1351, 1517(b). The reports are to be signed by the agency head. The report to the President is to be forwarded through the Director of OMB. In addition, the heads of executive branch agencies and the Mayor of the District of Columbia shall also transmit "[a] copy of each report . . . to the Comptroller General on the same date the report is transmitted to the President and Congress." 31 U.S.C. §§ 1351, 1517(b), as amended by the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. G, title II, § 1401, 118 Stat. 2809, 3192 (Dec. 8, 2004).

OMB has issued further instructions on preparing the reports, which may be found in OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget, § 145 (June 21, 2005). The report is to include all pertinent facts and a statement of all actions taken to address and correct the

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Antideficiency Act violation (such as administrative discipline imposed, referral to the Justice Department where appropriate, and new safeguards imposed). An agency also should include a request for a supplemental or deficiency appropriation when needed.

What if GAO uncovers a violation but the agency thinks GAO is wrong? The agency must still make the required reports, and must include an explanation of its disagreement.

For more background information on the Antideficiency Act its purpose, history and requirements go to <http://www.gao.gov/legal.htm>, open Volume II (2nd ed.) of *Principles of Federal Appropriations Law*, Chapter 6, Availability of Appropriations: Amount.